V.

THE COMMISSION SHOULD REJECT BELLSOUTH'S PROPOSED HISTORIC COST ADJUSTMENT AS EMBEDDED COST PRICING WHICH IS PROHIBITED UNDER THE FEDERAL ACT

Both this Commission and the FCC have rejected historic or embedded cost studies in favor of TELRIC. As previously noted, BellSouth's proposed historic cost adjustment is nothing more than a rate proposal based on an embedded cost study. The Commission should therefore reject BellSouth's historic cost adjustment and proceed to analyze the TELRIC rates proposed by BellSouth.

BellSouth may argue that it is unfair set rates for CLECs without consideration of actual historic costs. While admittedly BellSouth will have to pay these costs, extensive testimony was presented that a participant in a competitive market cannot charge more than forward-looking costs.[50] Further, rejecting BellSouth's proposed historic cost adjustment will not eliminate all embedded costs from its proposed rates. BellSouth's TELRIC study includes certain assumptions regarding its existing network, *e.g.*, cable routing, that influence the proposed rates.[51]

VI.

THE COMMISSION SHOULD REDUCE BELLSOUTH'S PROPOSED TELRIC RATES TO REFLECT FORWARD-LOOKING COSTS

ACSI has examined the cost studies prepared by BellSouth and determined that BellSouth has relied on a number of cost assumptions that are not forward-looking. Accordingly, ACSI recommends that BellSouth's proposed TELRIC rates be adjusted to reflect the following:

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50 *E.g.*, Kahn, Tr. 2457-58; Cabe, Tr. 1659-62; Wood, Tr. 1421.

51 Wood, Tr. 1421.

1. Depreciation Rates

The depreciation rates used by BellSouth in its cost study are those it uses for financial reporting purposes and are not appropriate for a network designed solely to provide narrow band, voice grade services. ACSI recommends an adjustment to BellSouth's depreciation rates based on the service lives prescribed by the FCC for BellSouth in 1995, which is the most recent data available.[52]

2. Cost of Money

The cost of money rate used by BellSouth in its studies is the 11.25 percent approved by the FCC in 1990. ACSI recommends an adjustment based on the 9.35% cost of money proposed by Staff's Witness Legler.[53]

3. Distribution and Feeder Utilization

The facilities utilization (fill factors) used by BellSouth were based on actual historic relationships reflecting embedded technologies. ACSI recommends an adjustment to BellSouth's proposed rates to reflect feeder and distribution fill factors, estimated by ACSI witness Dr. Kahn, which are more appropriately forward-looking.[54]

4. BellSouth's Loop Sample

BellSouth based its investment estimates for the loop on a sample of residential and small business loops which excludes significant service classifications, such as ESSX.[55] ESSX loops are among the shortest loops on the BellSouth system. *Id.* The result of excluding

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52 Kahn, Tr. 2407-10; ACSI Exhibit No. 3.

53 Legler prefiled Direct Testimony, p. 45; Kahn, Tr. 2411.

54 Kahn, Tr. 2415-20; ACSI Exhibit No. 4.

55 Zarakas/Caldwell, Tr. 528-30.

the shortest, and therefore cheapest, loops from the sample is to understate the loop investment. ACSI recommends adjusting BellSouth's loop sample to reflect all loops in the BellSouth universe.[56]

5. <u>BellSouth's Loop Weighting</u>

In its loop sampling process, BellSouth used data from its CRIS database to weight the relative proportions of business and residential loops. This database differs from publicly available ARMIS data.[57] ACSI recommends that BellSouth's proposed rates be adjusted for weighting based on company-specific ARMIS data.

6. <u>Shared Cost of Support Structures</u>

ACSI recommends adjusting BellSouth's proposed rates to reflect forward-looking sharing of support structures based on increased opportunities for sharing as new CLECs enter the market.[58]

7. <u>Reduced Maintenance Expenses Due to Productivity Gains</u>

ACSI recommends adjustment of BellSouth's maintenance expense calculations, which are based on its estimate of maintaining plant currently in place, to reflect forward-looking expected productivity and the savings from using new technology.[59]

8. <u>Wholesale Discount</u>

ACSI recommends adjusting BellSouth's proposed rates, which are based retail cost, for avoided costs using the discount percentages developed by the Commission in Docket No.

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[56] Kahn, Tr. 2424-25.

[57] Kahn, Tr. 2425-26.

[58] Kahn, Tr. 2426-28.

[59] Kahn, Tr. 2428-32.

6352-U.[60]

9. Shared and Common Costs

ACSI recommends that the mark-up for shared and common costs be reduced to 15 percent of direct costs as a reasonable forward-looking estimate for such cost allocation by a participant in a competitive market.[61].

Summary of ACSI's Adjustments

The above adjustments result in a cumulative reduction to BellSouth's proposal of $9.23 per loop per month as summarized in the following table:[62]

ADJUSTMENTS TO BELLSOUTH -GA DIRECT COST ESTIMATE FOR THE UNBUNDLED POTS LOOP (SL1)		
BellSouth Proposed TELRIC Price	**$20.57**	
BellSouth Estimate, Direct Cost	**$16.58**	
	ACSI Estimate	Incremental Effect
Depreciation	$15.75	($0.83)
Cost of Money	14.09	(1.59)
Fill Factors		
Distribution	13.16	(1.09)
Feeder	12.95	(0.27)
Sample Issues		
Loop Sample	12.61	(0.34)
ARMIS Weights	12.04	(0.72)
Support Structures	11.76	(0.41)
Maintenance Expense	11.40	(0.45)
Subscriber Line Testing	12.13	0.73
Retail	9.52	(2.61)
Common	11.34	1.82
Adjusted TELRIC Price	**$11.34**	

60 Kahn, Tr. 2432-33.

61 Kahn, Tr. 2433-39.

62 ACSI Exhibit No. 2.

The above analysis used BellSouth's proposed SL1 TELRIC loop rate of $20.57 as a starting point. This was BellSouth's proposed rate when ACSI filed its rebuttal testimony on August 29, 1997. In its surrebuttal, filed on September 8, 1997, BellSouth lowered its proposed SL1 TELRIC rate by seventy cents, to $19.87, to reflect corrections by BellSouth not related to the above adjustments.[63] Accordingly, the above result should be reduced by roughly seventy cents. While the foregoing discussion has focused on the SL1 unbundled loop rate, adjustments of like magnitude are appropriate for all rates proposed by BellSouth to correct assumptions that are not forward-looking in BellSouth's cost modeling.

In addition to the above adjustments, BellSouth's proposed rates must also be deaveraged to reflect geographic density. The FCC stated in its recent order in Ameritech's Section 271 application for Michigan that BOCs, such as BellSouth, must not only provide unbundled elements at prices based on TELRIC principles but also that such prices be geographically deaveraged. The FCC noted in its order that:

> [e]stablishing prices based on TELRIC is a necessary, but not sufficient, condition for checklist compliance. In order for us to conclude that sections 271(c)(2)(B)(I) and (ii) are met, rates based on TELRIC principles for interconnection and unbundled network elements must also be geographically deaveraged to account for the different costs of building and maintaining networks in different geographic areas of varying population density. Deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements. Deaveraging should, therefore, lead to increased competition and ensure that competitors make efficient entry decisions about whether they will use unbundled network elements or build facilities.[64]

BellSouth has testified that the Commission should not consider deaveraged rates for

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63 Caldwell/Zarakas, Tr. 452-54; BellSouth Exhibit No. 7.

64 Ameritech Order, ¶ 292.

policy reasons, stating that rate rebalancing and Universal Access Fund issues muse be resolved prior to deaveraging.[65] However, following BellSouth's election of alternative regulation, maximum rates are fixed for five years. O.C.G.A. § 46-4-166(b). ACSI urges the Commission to segregate the issues of unbundled element pricing and universal service. Universal Access Fund issues are not a proper subject for this proceeding. The Commission has opened Docket No. 5825-U for implementation of the Universal Access Fund. ACSI supports universal service, is currently paying into a universal service fund, and will participate in future proceedings to further refine universal service mechanisms.

The only deaveraged rate proposals contained in the record are the results of the Hatfield Model and the limited discussion contained in the prefiled testimony of BellSouth Witnesses Scheye and Varner.[66] BellSouth's deaveraging proposal can be used to factor ACSI's proposed adjusted rate into urban, suburban and rural rates. BellSouth has modified its proposed rates on numerous occasions since their original filing on April 30, 1997; however, analysis of the deaveraged rates in both Mr. Scheye's testimony and Mr. Varner's testimony reveals that the ratios for urban, suburban and rural rates are constant. ACSI recommends use of the latest deaveraged rates proposed in Mr. Varner's testimony to calculate ratios for deaveraging. Mr. Varner proposes an urban SL1 rate of $20.06 compared to a statewide average of $25.80. Therefore, ACSI recommends that the Commission establish an urban loop rate that is no more than 77.8% of the statewide average.[67] Suburban and rural rates could be established using similar ratios.

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65 Scheye, Tr. 106-08.

66 Scheye Tr. 110-11, Varner, Tr. 179.

67 $20.06 \div 25.80 = .778$.

VII.

CONCLUSION

ACSI urges the Commission to adopt deaveraged rates based on forward-looking TELRIC principals. The Commission should reject BellSouth's proposed rates based on historic cost and implement the adjustments to BellSouth's TELRIC rates, including deaveraging, proposed herein. ACSI urges the Commission to reject BellSouth's proposed non-recurring charges for loop provisioning as anticompetitive and discriminatory. The Commission should adopt a single non-recurring charge for loop provisioning with terms that meet the needs of the CLECs, with regard to cutover timing and duration, aTELRIC-based non-recurring charge that reflects the work involved, and pricing that is in parity with charges by BellSouth to its own customers for initiation of service.

This 15th day of October, 1997.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Brief of American Communication Services of Columbus, Inc. in Docket No. 7061-U upon the following persons by causing copies of the same to be placed in an envelope with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

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This 1st day of October, 1997.

William E. Rice

EXHIBIT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 960833-TP DOCKET NO. 960846-TP DOCKET NO. 960916-TP ORDER NO. PSC-96-1579-FOF-TP ISSUED: DECEMBER 31, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA

APPEARANCES:

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On behalf of BellSouth Telecommunications, Inc.

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On behalf of AT&T Communications of the Southern States, Inc.

Richard Melson, Esquire, Hopping Green Sams & Smith, 123 South Calhoun Street, Tallahassee, Florida 32301, and Martha McMillin, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342
On behalf of MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc.

Based on the evidence and the arguments presented, we find that the exchange of this information is vital for ALECs to be able to effectively compete. Since BellSouth already has the capability to do so, we find that BellSouth must develop an electronic interface for customer usage data transfer, as soon as possible.

Local Account Maintenance

BellSouth's witness Calhoun states that AT&T defines local account maintenance in its petition as the means by which BellSouth can update information regarding a particular customer, such as a change in the customer's features or services. Witness Calhoun also states that changes to a customer's features or services will be initiated by AT&T, and therefore, will be handled through the normal service order processes. Witness Calhoun states that there are exceptions to this when an end user customer switches from one ALEC to another and the resold service is a BellSouth service. Witness Calhoun adds that AT&T has requested electronic notification of these changes on a daily basis, which BellSouth has agreed to provide.

Witness Calhoun states that another exception is that AT&T has requested the capability to initiate PIC changes on resold lines through a local service request. Witness Calhoun states that BellSouth has agreed to accept these orders, and is currently evaluating the data elements necessary to include them in an EDI ordering interface.

In addition, AT&T explains that local account maintenance is the means by which a carrier can update information regarding a particular customer, such as a change in the customer's long distance carrier. AT&T's witness Shurter asserts that electronic interfaces would allow AT&T customers to have their accounts updated promptly and accurately.

Based on the arguments and evidence presented, we find that BellSouth shall be required to develop electronic interfaces for local account maintenance. Such interfaces shall be developed as soon as possible.

3. Cost Recovery

MCI's witness Martinez states that each party should bear its own costs of implementing necessary electronic interfaces. Witness Martinez further asserts that MCI has a tremendous cost to bear with respect to putting those systems in place. In its brief, AT&T also asserts that the costs associated with implementing electronic interfaces should be shared equitably among all parties who benefit from those interfaces, including BellSouth.

BellSouth's witness Scheye argues that AT&T has ignored the significant costs associated with the development of such interfaces. Witness Scheye states that once these costs are finalized, BellSouth will propose a cost recovery mechanism designed to recover all the costs related to the provisioning of electronic interfaces.

While the costs of implementing these electronic interfaces have not been completely identified, BellSouth did provide some cost estimates and some initial costs of developing such systems. Based on the evidence, we find that these operations support systems are necessary for competition in the local market to be successful. We believe that both the new entrants and the incumbent LECs will benefit from having efficient operational support systems. Thus, all parties shall be responsible for the costs to develop and implement such systems. We note that this is the stance the FCC has recently taken with cost recovery for number portability. However, where a carrier negotiates for the development of a system or process that is exclusively for that carrier, we do not believe all carriers should be responsible for the recovery of those costs.

Based on the foregoing, each party shall bear its own cost of developing and implementing electronic interface systems, because those systems will benefit all carriers. If a system or process is developed exclusively for a certain carrier, however, those costs shall be recovered from the carrier who is requesting the customized system.

F. Poles, Ducts and Conduits

Section 251(b)(4) of the Act deals with access to rights-of-way by requiring that all local exchange carriers have the following duty:

> (4) ACCESS TO RIGHTS-OF-WAY. - The duty to afford access to poles, ducts, conduits, and rights-of way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

The section referred to therein, Section 224, is titled REGULATION OF POLE ATTACHMENTS and addresses the regulation of poles, ducts, conduit and rights-of-way.

covers on the directories. MCI argues that "the Commission should order BellSouth to require, as a condition of BellSouth providing its customer listing information to BAPCO, that BAPCO allow MCI to have such an appearance on the directory cover."

BellSouth argues that the issue of placing a logo on a directory cover is not subject to arbitration under Section 251 of the Act. BellSouth states that the Act only requires the inclusion of subscriber listings in the white page directories, which BellSouth has agreed to do. BellSouth's witness Scheye explains that BellSouth's directories are published by a separate affiliate, BAPCO. Any Commission decision on this issue would affect the interests of BAPCO, which is not a party to these proceedings. BellSouth asserts that where directory publishing is concerned, AT&T and MCI should negotiate with BAPCO, not BellSouth.

BellSouth further argues that Section 251(b)(3) charges it with a duty, in respect to dialing parity, only to provide competitive LECS with nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing. In addition, BellSouth argues that Section 271 of the Act requires it to provide to other telecommunications carriers access and interconnection that includes "[w]hite pages directory listings for customers of the other carriers' telephone exchange service," in order to enter the interLATA market. BellSouth notes that Section 271 does not include logo appearances on directory covers.

AT&T's witness Shurter concedes that the FCC's Order addresses branding in the context of operator services and directory assistance services, but does not address directly the branding and unbranding of other customer services.

We find that the obligation of BellSouth to provide interconnection with its network, unbundled access to network elements, or to offer telecommunications services for resale to the competitive LECs does not embrace an obligation to provide a logo appearance on its directory covers. In the absence of any express or implied language in either the Act or the rules to impose such an obligation we will not grant ATT's and MCI's requests on this issue. Therefore, we find it appropriate that it be left for AT&T and MCI to negotiate with the directory publisher for an appearance on the cover of the white page and yellow page directories.

L. Interim Number Portability Solutions and Cost Recovery

Section 251(b)(2) of the Act requires all local exchange companies to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the

Commission. The Act at section 3(30) defines the term "number portability" to mean the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

On July 2, 1996, in the FCC's First Report and Order on Telephone Number Portability, 96-833, the FCC interpreted the requirements of the Act to require local exchange companies to offer currently available methods of number portability, such as remote call forwarding (RCF) and direct inward dialing (DID). The FCC has labeled these methods of providing number portability as "temporary" number portability methods. The FCC required the LECs to offer number portability through RCF, DID, and other comparable methods, because they are the only methods that currently are technically feasible. Order 96-833 ¶ 110.

AT&T requests that we require BellSouth to provide the following interim number portability solutions: 1) remote callforwarding; 2) direct inward dialing; 3)- route index portability hub; and 4) local exchange routing guide reassignment at the NXX level. (LERG)

BellSouth agrees to provide all of these temporary number portability options. However, BellSouth expects the ALECs to reciprocate these capabilities. AT&T argues that the FCC order does not require new entrants to provide interim number portability. However, we point out that section 251(b)(2) of the Act, as well as paragraph 110 of Order 96-833, does require all local exchange companies, including ALECs, to provide number portability. Therefore, we conclude that the ALECS shall provide the same temporary number portability methods as they request BellSouth to provide.

Section 251(e)(2) of the Act requires that all carriers bear the costs of establishing number portability. The FCC established criteria to determine an appropriate cost recovery method. First, the FCC proposed that the recovery method should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer. The FCC interprets this to mean that the incremental payment made by a new entrant for winning a customer that ports his number cannot put the new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer. See Order 96-833 ¶ 132. Second, the FCC determined that an acceptable cost recovery method should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments. See Order 96-833 ¶ 135.

The FCC order identifies various methods of cost recovery that meet these criteria. The first method is to allocate number portability costs based on a carrier's number of active telephone numbers relative to the total number of active telephone numbers in a service area. A second method is to allocate the costs of currently available measures between all telecommunications carriers and the incumbent LECs based on each carrier's gross telecommunications revenues net of charges to other carriers. A third competitively neutral cost recovery method would be to assess a uniform percentage assessment on a carrier's gross revenues less charges paid to other carriers. We find that all three of these methods produce essentially the same result relative to the distribution of costs between carriers. The final method, that the FCC believes would meet its criteria is to require each carrier to pay for its own costs of currently available number portability measures.

Our existing policy on cost recovery of temporary number portability requires that only the new entrants pay for temporary number portability solutions. The FCC's order clearly prohibits this method of cost recovery. The FCC requires costs to be recovered from all carriers. In Docket No. 950737-TP, we will address the cost recovery issue as it relates to the provision of temporary number portability. All carriers, of course, are not represented in the instant proceeding. Moreover, we believe the cost recovery issue should be resolved in a generic investigation. Nevertheless, we determine that we should establish an interim cost recovery method until the proceeding in Docket No. 950737-TP is complete. Thus, because the parties in this proceeding have not provided any cost information for most of the temporary number portability methods, we find it appropriate to order that each carrier pay its own costs in the provision of temporary number portability. Further, we order all telecommunications carriers in this proceeding to track their costs of providing temporary number portability with sufficient detail to verify the costs, in order to facilitate our consideration of recovery of these costs in Docket No. 950737-TP.

M. The Pricing of Switched Access

This issue concerns whether the provisions of Sections 251 and 252 of the Act apply to switched access. AT&T argues that both switched access charges must be priced according to Section 251(d)(1) at economic cost. If AT&T is correct, it would mean that the rates that BellSouth charges for switched access would fall

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

COMPLAINT OF AMERICAN COMMUNICATION SERVICES OF COLUMBUS, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING ACCESS TO UNBUNDLED LOOPS	))))))	**DOCKET NO. 7818-U**

COMPLAINT OF AMERICAN COMMUNICATION SERVICES OF COLUMBUS, INC.

American Communication Services of Columbus, Inc. ("ACSI") hereby files this complaint against BellSouth Telecommunications, Inc. ("BellSouth") and as grounds therefor states as follows:

I. PRELIMINARY

1.

Federal and State laws intended to promote competition in the telecommunications industry require incumbent local exchange companies, such as BellSouth, to provide nondiscriminatory access to unbundled loops. ACSI is one of the earliest providers of competitive switched service in Georgia and is the first competitor to request a significant number of unbundled loops from BellSouth. ACSI has experienced excessive delays in obtaining unbundled loops from BellSouth, unreasonable service interruptions in switching customers to those loops, and frequent service disruptions to customers connected to those loops. In addition, ACSI recently began serving customers in Georgia by reselling BellSouth services. While ACSI's resale experience to date is limited, ACSI has already experienced some of the same provisioning delays and service disruptions. BellSouth's failure to provide proper competitive interconnection and access jeopardizes the ability of competitive service providers to attract and retain customers and, therefore, threatens the development of competitive markets in Georgia.

2.

On December 23, 1996, ACSI filed a complaint with the Commission against BellSouth based on the difficulties ACSI experienced with BellSouth's provisioning of ACSI's initial orders for unbundled loops in November and December, 1996. The Commission designated that complaint Docket No. 7212-U. ACSI also filed a complaint with the FCC based on the same facts. Because of the ongoing difficulties suffered by ACSI with unbundled loops purchased from BellSouth, and efforts by ACSI and BellSouth to settle the complaints, the procedural schedule for Docket No. 7212-U could not be completed within the 180 days mandated by O.C.G.A. § 46-5-168(c). Accordingly, on June 19, 1997, ACSI filed a Motion to Withdraw its Complaint Without Prejudice. This Complaint seeks redress of the same unbundled loop problems complained of in Docket No. 7212-U and the continuing difficulties experienced by ACSI as a CLEC providing competitive services in BellSouth's Georgia territory.

II. STATEMENT OF FACTS

3.

ACSI is a competitive local exchange carrier certificated to provide switched and dedicated local exchange service in Georgia. ACSI's parent company, American Communications Services, Inc., through its subsidiaries, operates 28 fiber optic networks throughout the United States, primarily in the southern and southwestern states, and has 8 such networks under construction.

4.

On December 12, 1995, the Commission granted Certificate of Authority No. 960 to ACSI for the provision of interLATA intrastate telecommunications in Georgia. More specifically, the Commission granted ACSI authority to provide special access and dedicated private line service in the Columbus, Georgia area. In addition, on June 21, 1996, the Commission granted to ACSI Interim Certificate of Authority No. L-015 to provide switched local exchange services.

5.

BellSouth is a Regional Bell Operating Company that provides switched local exchange and other telecommunications services in Georgia and eight other Southern states. BellSouth is the incumbent provider of switched local exchange service in Columbus, Georgia.

6.

ACSI operates a fiber optic network in Columbus, Georgia. Columbus is the first city to be offered competitive switched local exchange service by ACSI.

7.

On July 25, 1996, ACSI and BellSouth entered into an Interconnection Agreement ("Interconnection Agreement"). On August 13, 1996, ACSI filed a Petition for Arbitration with this Commission, Docket No. 6854-U, requesting the Commission to resolve certain unbundling pricing issues. On October 17, 1996, ACSI and BellSouth signed an Amendment ("Amendment") to the Interconnection Agreement addressing all outstanding issues and, in particular, the pricing of unbundled loops, as a settlement of ACSI's Petition for Arbitration. The Interconnection Agreement between ACSI and BellSouth, including the Amendment, was approved by Order of the Georgia Public Service Commission ("Commission") in Docket No. 6881-U signed by the

Chairman and Executive Secretary on November 8, 1996.

8.

On December 20, 1996, ACSI and BellSouth entered into an agreement regarding the resale of BellSouth's services by ACSI (the "Resale Agreement"). The Resale Agreement between ACSI and BellSouth was approved by order of the Commission in Docket No. 7250-U, signed by the Chairman and Executive Secretary on March 14, 1997.

9.

The Interconnection Agreement provides specific detail as to the provisioning of unbundled loops (Section IV), including Order Processing (Section IV.C), Conversion of Exchange Service to Network Elements (Section IV.D), and Service Quality (Section IV.E). The relevant provisions of the Interconnection Agreement are attached hereto as Exhibit A. Section IV.C.2 of the Interconnection Agreement provides that "Order processing for unbundled loops shall be mechanized, in a form substantially similar to that currently used for the ordering of special access services."

10.

The Interconnection Agreement also explicitly requires certain processes for the Conversion of Exchange Service to Network Elements (Section IV.D). This conversion process is designed to be a seamless process according to which a half-hour cutover window is agreed upon by the parties 48 hours in advance, ACSI and BellSouth coordinate the cutover, and the customer is not disconnected for more than 5 minutes. BellSouth also must coordinate implementation of Service Provider Number Portability (SPNP) as part of an unbundled loop installation. The following are among the key provisions of Section IV.D:

D.1 Installation intervals must be established to ensure that service can be established via unbundled loops in an equivalent timeframe as BellSouth provides services to its own customers, as measured from the date upon which BellSouth receives the order to the date of customer delivery.

D.2 On each unbundled network element order in a wire center, ACSI and BellSouth will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the ACSI and BellSouth personnel will make telephone contact to complete the cutover.

D.3 Within the appointed 30-minute cutover time, the ACSI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.

. . .

D.6 The standard time expected from disconnection of a live Exchange Service to the connection of the unbundled element to the ACSI collocation arrangement is 5 minutes. If BellSouth causes an Exchange Service to be out of service due solely to its failure for more than 15 minutes, BellSouth will waive the non-recurring charge for that unbundled element.

D.7 If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of ACSI.

D.8 If ACSI has ordered Service Provider Number Portability (SPNP) as part of an unbundled loop installation, BellSouth will coordinate implementation of SPNP with the loop installation.

11.

Since placing its initial orders for unbundled loops in November 1996, ACSI has experienced numerous problems with the quality of service for unbundled loops it purchases from BellSouth, including excessive service disruptions during loop provisioning, lack of coordination of number portability with loop provisioning, excessive volume losses and unexplained service disruptions.

12.

On or before November 19, 1996, ACSI placed its first three orders for unbundled loops in Columbus, Georgia, requesting cutover of the customers to AGSI service on November 27, 1996. All three customers involved Plain Old Telephone Service ("POTS") lines, the simplest possible cutover. Each of the three orders included an order for Service Provider Number Portability ("SPNP"). Pursuant to the process established in the Interconnection Agreement, ACSI submitted its first orders for unbundled loops through completion and submission of the Service Order form specified in the Facilities Based Carrier Operating Guide ("FBOG"). These orders were confirmed by BellSouth on November 25 and 26. In cutting over these three customers on November 27, 1996, BellSouth completely failed to comply with the cutover procedures established in Section IV.D of the Interconnection Agreement. As described more fully in the following paragraphs, the affected customers on those orders are Corporate Center, Jefferson Pilot and Mutual Life Insurance Company.

13.

On October 29, 1996, ACSI submitted a request that BellSouth assign Corporate Center to ACSI in its Line Information Data Base ("LIDB"). An Access Service Report ASR to provision of unbundled loop to ACSI for serving this customer was submitted on November 25, 1996. BellSouth confirmed the request due date of November 27, 1996, and attempted to cut over the customer at that time. BellSouth's initial attempt to provision an unbundled loop to ACSI failed on November 27, 1996, causing the customer to be disconnected from all local services for over 24 hours. The customer was returned to BellSouth local exchange service on November 28, 1996, and the due date for loop provisioning to ACSI rescheduled. Ultimately, BellSouth re-attempted installation on January 7, 1997, and the cutover occurred in less than one hour.

14.

On November 19, 1996, ACSI submitted a request that BellSouth assign Jefferson Pilot to ACSI in its LIDB database. An ASR to provision an unbundled loop to ACSI for serving this customer was submitted on November 20, 1996. BellSouth confirmed the requested due date of November 27, 1996, and attempted to cut over the customer at that time. During BellSouth's attempt to provision an unbundled loop to ACSI on this date, however, the customer was disconnected for approximately 4-5 hours. When the unbundled loop order was implemented and ACSI began provisioning local exchange service to the customer it was discovered that BellSouth failed to implement ACSI's order for SPNP on this line. Calls placed to the customer's old (BellSouth) telephone number were not being routed to the new (ACSI) number. As a result, the customer--a business selling insurance services--was able to place outgoing calls, but could not receive any incoming calls. Calls dialed to the old telephone number received a BellSouth intercept message stating that the number had been disconnected.

15.

On November 19, 1996, ACSI submitted a request that BellSouth assign Mutual Life Insurance Company to ACSI in its LIDB database. An ASR to provision an unbundled loop to ACSI for serving this customer was submitted on November 20, 1996. BellSouth confirmed the requested due date of November 27, 1996, and attempted to cut over the customer at that time. During BellSouth's attempt to provision an unbundled loop to ACSI on this date, the customer was disconnected for approximately 6-7 hours. As with Jefferson Pilot, after the unbundled loop order was implemented, it was discovered that BellSouth failed to implement ACSI's order for SPNP. Thus, Mutual Life was also unable to receive calls placed to its old telephone number, and callers instead received an intercept message stating that the number had been disconnected.

16.

Columbus, Georgia is a relatively small and close-knit community. This litany of service failures quickly threatened to permanently poison ACSI's business reputation for being able to provide high quality local telecommunications services. Faced with the prospect of such permanent injury, ACSI was forced to suspend the submission of unbundled loop orders until it could be comfortable that BellSouth's provisioning problems were rectified, despite the fact that ACSI had invested heavily in constructing a competitive local exchange network and deploying a sales force. Therefore, on or about December 4, 1996, ACSI informed BellSouth of its specific concerns arising from these provisioning failures and instructed it to place all of its pending orders on hold until the problems could be rectified. After ACSI's request to put further orders on hold, however, three BellSouth customers for whom ACSI had requested conversion to ACSI service were nonetheless disconnected by BellSouth, resulting in severe service impacts for these customers. As described more fully in the following paragraphs, these additional problems affected ACSI customers Joseph Wiley, Jr., Cullen & Associates, and Carrie G. Chandler.

17.

The order for <u>Joseph Wiley, Jr</u>. was initially submitted as a LIDB storage request on November 19, 1996 and an ASR was submitted on December 2, 1996. Service was requested to be installed on December 4, 1996. BellSouth confirmed the requested due date and time. On December 4, 1996, the customer experienced multiple disruptions in his BellSouth service, which continued through December 5, 1996. BellSouth was unable on this attempt to establish service through the use of unbundled local loops. Ultimately, an unbundled loop was provisioned but not until January 3, 1996.

18.

The order for Cullen & Associates was initially submitted as a LIDB storage request on November 19, 1996 and an ASR was submitted on December 2, 1996. Service was requested to be installed on December 4, 1996. BellSouth confirmed the requested due date and time. On December 4, 1996, the customer experienced multiple disruptions in its BellSouth service, and BellSouth's initial cutover attempt ended without establishing service through unbundled loops. Ultimately, an unbundled loops was provisioned but not until December 23, 1996.

19.

The order for Carrie G. Chandler was initially submitted as a LIDB storage request on November 19, 1996 and an ASR was submitted on December 2, 1996. Service was requested to be installed on December 5, 1996. BellSouth confirmed the requested due date and time. On December 5, 1996, the customer experienced multiple disruptions in its BellSouth service, which were unexplained. BellSouth did not successfully install an unbundled loop until January 7, 1997.

20.

As a result of BellSouth's failure to implement the procedures agreed upon in the Interconnection Agreement with regard to provisioning of unbundled loops, BellSouth itself retained customers that signed-up for ACSI service. In addition to causing damage to ACSI's reputation as a provider of high quality telecommunications services, BellSouth has directly caused ACSI to lose the revenues associated with its planned unbundled loop orders.

21.

In the process of responding to ACSI's inquiries on unbundled loops, BellSouth revealed severe shortcomings in its loop provisioning procedures. On December 4, during a conference call with ACSI, a BellSouth Executive Vice President, Ann Andrews, informed ACSI that

BellSouth will not provide basic provisioning functions (such as order status, jeopardies against the due date, etc.) that are routinely provided to special access customers. Ms. Andrews stated that these functions would not be performed because they are not performed for BellSouth end users. These statements were in direct contravention of Section IV.C.2 of the Interconnection Agreement which ensures similar order processing to that currently used for special access services. BellSouth's entire approach to unbundling indicates that the company has failed to commit the resources to establish the unbundled loop processes agreed to on July 25, 1996 with ACSI. Furthermore, it indicates that the personnel implementing the Interconnection Agreement at the time either did not understand or did not intend to comply with that agreement.

22.

Until December 12, 1996, BellSouth also refused, despite repeated requests, to provide provisioning intervals for: a) the time between the placement of an order by ACSI and firm order confirmation by BellSouth and b) the time between the placement of an order by ACSI and cutover of the customer to ACSI. On December 12, 1996, BellSouth committed to: a) 48 hours between the placement of an order and firm order confirmation and b) offered to agree to 5 days from the placement of an order by ACSI to cutover. Of course, these timeframes were not put into practice at that time. BellSouth has not agreed to these intervals in writing, and ACSI continues to have significant problems with both firm order confirmations and BellSouth cutover intervals.

23.

ACSI has worked diligently to advise BellSouth of the difficulties it encountered in obtaining unbundled loops. Since December 1996, ACSI has been in almost constant communication with BellSouth including correspondence, phone calls and meetings at various